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2                   **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3                   **WESTERN DISTRICT OF MISSOURI**  
                  **SOUTHERN DIVISION**

4 **UNITED STATES OF AMERICA,**            ) **Case No. 22-03125-01-CR-S-MDH**  
  )  
5                   **Plaintiff,**                ) **Springfield, Missouri**  
  ) **November 1, 2022**  
6 **v.**    )  
  )  
7 **ROGERIC HANKINS,**                        )  
  )  
8                   **Defendant.**                )  
  )  
\_\_\_\_\_)

9  
10                   **TRANSCRIPT OF HEARING ON WAIVER OF INDICTMENT,**  
11                   **INITIAL APPEARANCE, FILING OF INFORMATION AND PLEA**  
12                   **BEFORE THE HONORABLE DAVID P. RUSH**  
                  **CHIEF UNITED STATES MAGISTRATE JUDGE**

13 **APPEARANCES:**

14 For the Plaintiff:                        Ms. Laura Gilson  
  US Dept. of Justice, Civil Rights  
15    950 Pennsylvania Ave. NW  
  PH 5116  
16    Washington, D.C. 20590  
  (202) 532-5158

17 For the Defendant:                       Mr. Ian A. Lewis  
  Mr. Paul Duchscherer  
18    Federal Public Defender's Office  
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24 Proceedings recorded by electronic sound recording, transcript  
25 produced by transcription service.

1 (Court in Session at 9: a.m.)

2 THE COURT: Calling in *United States vs. Rogerick*  
3 *Hankins*. The defendant appears in person, along with his  
4 attorney, Mr. Paul Duchscherer and Mr. Ian Lewis. The United  
5 States appears by Laura Gibson. Your title again, Ms. Gibson?

6 MS. GILSON: Your Honor, it's actually Gilson. And I'm  
7 a trial attorney with the U.S. Department of Justice for the  
8 Criminal Section of the Civil Rights Division.

9 THE COURT: I'm sorry. I wrote that down incorrectly.  
10 And this matter is set this morning -- thank you -- for a Waiver  
11 of an Indictment, the filing of a one-count Information and then  
12 a plea to that Information, pursuant to a written Plea Agreement.  
13 Mr. Hankins, have you seen the Information that the United States  
14 proposes to file in your case?

15 MR. HANKINS: Yes, sir.

16 THE COURT: Do you understand that because the maximum  
17 penalty contained in that Information exceeds one year, that you  
18 have an absolute right to have that matter presented to a federal  
19 Grand Jury?

20 MR. HANKINS: Yes, sir.

21 THE COURT: Now, I know that you and your attorney have  
22 signed a Waiver of an Indictment, but I'm going to briefly  
23 describe for you the Grand Jury process, and then I'll ask two  
24 follow-up questions in relation to the waiver that you've signed.  
25 A Grand Jury would consist of not more than 23 persons and not

1 less than 16 persons, and they would listen to the evidence  
2 presented by the United States. If not satisfied with the scope  
3 of that evidence, they could subpoena evidence themselves. And  
4 if, after hearing it all, 12 or more found probable cause to  
5 believe that this offense had been committed and that you  
6 committed it, then they would return an indictment and that would  
7 be the charge against you. If they did not -- 12 or more did not  
8 find probable cause, this charge could not be filed. The only  
9 way that the United States can file this Information without  
10 going through the Grand Jury process, as I've just described to  
11 you, is with your informed knowledge and consent. Do you  
12 understand your right to have this matter presented to a federal  
13 Grand Jury?

14 MR. HANKINS: Yes, sir.

15 THE COURT: And is it your desire to give up that right,  
16 understanding that that will allow the United States to file this  
17 Information?

18 MR. HANKINS: Yes, sir.

19 THE COURT: I am also signing the Waiver of an  
20 Indictment, finding that the Waiver has been made with the  
21 defendant's informed knowledge and consent. The record should  
22 reflect that the Information has been filed with the court. Mr.  
23 Hankins, you have also signed a consent to have these proceedings  
24 for a plea of guilty before a Magistrate Judge, with the  
25 understanding that a United States District Judge, a judge of

1 higher jurisdiction, will keep your case for acceptance of the  
2 plea of guilty and sentencing. Even though you've signed this  
3 consent, you have a right, if you wish, to appear before a United  
4 States District Judge, a judge of higher jurisdiction. At any  
5 appearance before the District Judge, you are presumed innocent  
6 until such time, if ever, as the United States establishes your  
7 guilt beyond a reasonable doubt to the satisfaction of the judge  
8 or jury. You always have a right to be present and to confront  
9 and cross-examine witnesses. You have a right to use the power  
10 of the court to subpoena evidence on your behalf. And you have a  
11 right to testify or not testify, as you would choose. And if you  
12 chose not to testify, it would not be held against you because  
13 that is your right. If, after understanding the charge against  
14 you, the range of punishment, if convicted, and your right to  
15 appear before a District Judge, if you wish, you may waive or  
16 give up that right and proceed this morning before the Magistrate  
17 Judge. As I indicated, you have signed such a consent. Do you  
18 understand that you have a right to appear before a United States  
19 District Judge, a judge of higher jurisdiction, for these  
20 proceedings?

21 MR. HANKINS: Yes, sir.

22 THE COURT: And is it your desire to give up that right  
23 and proceed this morning before the Magistrate Judge?

24 MR. HANKINS: Yes, sir.

25 THE COURT: Do you understand the charge against you in

1 the Information that's been filed in this case?

2 MR. HANKINS: Yes, sir.

3 THE COURT: Do you understand that if convicted of the  
4 charge in the Information, that the maximum penalty the court may  
5 impose is not more than ten years' imprisonment, not more than a  
6 \$250,000 fine, not more than three years' supervised release, an  
7 order of restitution, and a \$100 mandatory special assessment?

8 MR. HANKINS: Yes, sir.

9 THE COURT: To the charge in the Information, how do you  
10 wish to plead, guilty or not guilty?

11 (Off Record: Attorney-Client Discussion)

12 MR. HANKINS: Oh, guilty. Yeah.

13 THE COURT: And, Mr. Hankins, I hear you just fine. The  
14 hearing is being recorded, and there will be a transcript made of  
15 this hearing. And sometimes our transcriptionist has difficulty  
16 picking up. You need to speak up just a little bit.

17 MR. HANKINS: Yes, sir.

18 THE COURT: And that would be great. Again, I hear you  
19 fine, even though my family accuses me of not being able to hear.  
20 But my courtroom deputy, she's monitoring it, and she told me  
21 that the volume on your end needs to come up a little bit. Okay?

22 MR. HANKINS: Yes, sir.

23 THE COURT: All right. Thank you. Would you please  
24 raise your right hand?

25 ROGERIC HANKINS, DEFENDANT, SWORN

1 THE COURT: Has anyone made any threat of any kind to  
2 force you to plead guilty or give up any of the other rights  
3 we've discussed this morning?

4 MR. HANKINS: No, sir.

5 THE COURT: You have signed a Plea Agreement. Have you  
6 read that Plea Agreement and gone over it with your attorney, Mr.  
7 Duchscherer?

8 MR. HANKINS: Yes, sir.

9 THE COURT: Do you understand what's contained in the  
10 Plea Agreement?

11 MR. HANKINS: Yes, sir.

12 THE COURT: Other than what is contained in the Plea  
13 Agreement, has anyone made any promise of any kind to induce you  
14 or overcome your will to get you to plead guilty or give up any  
15 of the other rights we've discussed?

16 MR. HANKINS: No, sir.

17 THE COURT: I mentioned to you that there was a  
18 supervised release term of not more than three years that could  
19 be imposed in your case. Do you understand that if that term of  
20 supervised release were imposed and then revoked for any reason,  
21 that you could be required to serve an additional term of  
22 imprisonment of not more than two years, and if that happened,  
23 you would receive no credit for any other time you'd spent either  
24 in custody or on release?

25 MR. HANKINS: Yes, sir.

1 THE COURT: Do you understand that the court could then  
2 impose an additional term of supervised release, which is  
3 governed by the maximum of the statute, minus any time you'd  
4 spent in custody as a result of a violation?

5 MR. HANKINS: Yes, sir.

6 THE COURT: Do you understand that from a sentence  
7 imposed in your case that there is no parole?

8 MR. HANKINS: Yes, sir.

9 THE COURT: Do you understand that there are Sentencing  
10 Guidelines to which the District Judge or the sentencing judge  
11 would refer to in an advisory capacity when attempting to fashion  
12 a reasonable sentence in your case?

13 MR. HANKINS: Yes, sir.

14 THE COURT: There are Sentencing Guideline calculations  
15 in your Plea Agreement. Have you discussed the Sentencing  
16 Guidelines with Mr. Duchscherer?

17 MR. HANKINS: Yes, sir.

18 THE COURT: And do you understand them?

19 MR. HANKINS: Yes, sir.

20 THE COURT: Do you understand that the final decision as  
21 to how the guidelines are calculated and ultimately what sentence  
22 will be imposed rests with the District Judge?

23 MR. HANKINS: Yes, sir.

24 THE COURT: If the District Judge would calculate the  
25 guidelines differently from what is in the Plea Agreement and

1 what you've discussed with your attorney, that fact would not  
2 give you the right to withdraw or change your plea of guilty. Do  
3 you understand that?

4 MR. HANKINS: Yes, sir.

5 THE COURT: Once the District Judge establishes the  
6 advisory guideline range, in some circumstances, you could be  
7 sentenced above that range, and in other circumstances, you could  
8 be sentenced below that range. And again, the judge's decision,  
9 if you disagreed, would not give you the right to withdraw your  
10 plea of guilty. Do you understand that?

11 MR. HANKINS: Yes, sir.

12 THE COURT: Now, Mr. Hankins, you have a right to a  
13 trial by jury with all the protections that I explained to you at  
14 the beginning of these proceedings. Do you understand your right  
15 to a trial by jury?

16 MR. HANKINS: Yes, sir.

17 THE COURT: And do you understand that if the court  
18 accepts your plea of guilty, that there won't be a trial?

19 MR. HANKINS: Yes, sir.

20 THE COURT: Now, I'm going to ask you about the offense  
21 charged in the Information. I would remind you that you are  
22 under oath. You must answer truthfully. Any false answers could  
23 result in charges of false swearing or perjury. You always have  
24 the right to remain silent. And I want to refer you to your plea  
25 bargain agreement on page 2, Paragraph 3, which is entitled in



1 bold **Factual Basis for Guilty Plea.** That takes up the remainder  
2 of page 2 and then the entirety of page 3. Have you read  
3 Paragraph 3 and gone over it with Mr. Duchscherer?

4 MR. HANKINS: Yes, sir.

5 THE COURT: Are the statements contained in Section 3  
6 true?

7 MR. HANKINS: Yes, sir.

8 THE COURT: Mr. Duchscherer, you've had access to the  
9 Government's discovery file in this case, have you not?

10 MR. DUCHSCHERER: I have, Your Honor.

11 THE COURT: And based upon your review of the discovery  
12 file, are you satisfied, if put to proof, that the United States  
13 could make a submissible case as to all the elements pertaining  
14 to the Information as set forth in Section 3 of the Plea  
15 Agreement?

16 MR. DUCHSCHERER: Yes, Your Honor.

17 THE COURT: There is an adequate factual basis for the  
18 plea of guilty to the Information. I find that the defendant's  
19 plea is voluntary and did not result from force, threats or  
20 promises, other than those set forth in the Plea Agreement. Mr.  
21 Hankins, you are represented in this case by Mr. Duchscherer.  
22 And, Mr. Lewis, have you also assisted in this case?

23 MR. LEWIS: I have, Your Honor.

24 THE COURT: All right. Have you had enough time to talk  
25 with both attorneys about your case?

1 MR. HANKINS: Yes, sir.

2 THE COURT: Are you satisfied with the advice that  
3 they've given you?

4 MR. HANKINS: Yes, sir.

5 THE COURT: The law requires me to ask you if this  
6 morning you are on any medication prescribed by a physician or  
7 any drugs or alcohol of any kind which would affect your ability  
8 to understand what we're doing?

9 MR. HANKINS: No, sir, I'm not, no.

10 THE COURT: The plea bargain agreement that you've  
11 signed also contains what we refer to as an appeal waiver. It  
12 can be found on page 11 at the top of the page, Paragraph 15,  
13 which is entitled in bold **Waiver of Appellate and Post-Conviction**  
14 **Rights**. And I'm going to be referring initially directly to the  
15 language in subparagraphs (a) and (b) of Paragraph 15, and then  
16 we'll also briefly discuss Paragraph 9(c). Subparagraphs (a) and  
17 (b) provide that you acknowledge, understand and agree that by  
18 pleading guilty pursuant to the Plea Agreement that you waive  
19 your right to appeal now or collaterally attack later a finding  
20 of guilt following the acceptance of the Plea Agreement, except  
21 on grounds of ineffective assistance of counsel or prosecutorial  
22 misconduct. That you expressly waive your right to appeal your  
23 sentence directly now or collaterally later on any ground, except  
24 claims of ineffective assistance of counsel, prosecutorial  
25 misconduct or an illegal sentence. An illegal sentence includes

1 a sentence imposed in excess of the statutory maximum but does  
2 not include less serious sentencing errors, such as a  
3 misapplication of the Sentencing Guidelines, an abuse of  
4 discretion or the imposition of an unreasonable sentence.

5 However, if the United States exercised its right to appeal, you  
6 would be released from the appeal waiver and could appeal as  
7 allowed by law. And then also in subparagraph (c), it indicates  
8 that you waive any right to challenge the constitutionality of  
9 the statute to which you're pleading guilty, and that you waive  
10 any and all claims that the statement of facts provided herein is  
11 insufficient to support your guilty plea. Do you understand that  
12 by signing this Plea Agreement that you've given up those rights  
13 to appeal as set forth in Paragraph 15?

14 MR. HANKINS: Yes, sir.

15 THE COURT: Understanding that and the other matters  
16 that we've discussed this morning, is it your desire for the  
17 court to accept the plea of guilty?

18 MR. HANKINS: Yes, sir.

19 THE COURT: Ms. Gilson, on behalf of the United States,  
20 do you have any other record under Rule 11 that you think I need  
21 to make?

22 MS. GILSON: I do not, Your Honor.

23 THE COURT: And, Mr. Duchscherer, on behalf of the  
24 defendant, do you have any other record under Rule 11 that you  
25 think I need to make?

1 MR. DUCHSCHERER: I do not.

2 THE COURT: I will recommend the plea of guilty be  
3 accepted, and I will order a Presentence Investigation to be  
4 conducted by the Probation Office. Mr. Hankins, there's been no  
5 request by the United States for detention in this matter, is  
6 that correct, Ms. Gilson?

7 MS. GILSON: That is correct, Your Honor.

8 THE COURT: Therefore, I have prepared a bond and order  
9 setting conditions of release, which you've reviewed with  
10 Pretrial Services. You went over them with the Pretrial Services  
11 Officer, and you have signed them. Do you understand the  
12 conditions of your release and the penalties should you violate  
13 any or fail to appear?

14 MR. HANKINS: Yes, sir.

15 THE COURT: Do you agree to abide by these conditions?

16 MR. HANKINS: Yes, sir.

17 THE COURT: I will order you released on these  
18 conditions. Your next appearance would appear to be in front of  
19 Judge Harpool for sentencing. You know, Mr. Hankins, this is a  
20 very, very serious charge, and I'll be frank with you that if  
21 they were to move to detain, I would have detained you.

22 MR. HANKINS: Yes, sir.

23 THE COURT: It's very troubling to read what your  
24 actions were in this case. That being said, I hope that whatever  
25 drove you to do what you did, I hope that you seek forgiveness

1 and that you get on a different path. The path you were on, the  
2 life you were living when this act occurred, is going to lead --  
3 has led you to where you are today, and it's going to lead you  
4 into a life of, I think, just misery. You need to get on a  
5 different path in life. And you can do that. As much as this  
6 may be offensive to read, there's nobody in this room that we've  
7 all the things that we need grace and forgiveness for. And so, I  
8 hope you'll get on that different path in life. Otherwise,  
9 you're going to be in and out of the criminal justice system.  
10 And I can promise that getting on that different path will lead  
11 to a more fulfilling and meaningful life. So, as much as it's  
12 troubling, I have things in my background that I wouldn't want  
13 people to know that are troubling. You know, they don't --  
14 people don't see my heart, and they don't know everything I've  
15 done. So, I hope you can -- you can find redemption, and you can  
16 -- that you can just be a productive citizen and then put this  
17 behind you. So, good luck to you.

18 MR. HANKINS: Thank you, sir.

19 THE COURT: Is there anything further from either side?

20 MS. GILSON: No, Your Honor.

21 MR. DUCHSCHERER: No, Your Honor. Thank you.

22 THE COURT: All right. Thank you. With that, we'll be  
23 adjourned.

24 (Court Adjourned at 9:22 a.m.)  
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4  
5 I certify that the foregoing is a correct transcript  
6 from the electronic sound recording of the proceeding in the  
7 above-entitled matter.

8  
9 /s/ Lissa C. Whittaker  
Signature of transcriber

November 2, 2022  
Date